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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,261	09/29/2003	Van Au	J6817(C)	1763

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EXAMINER	
ELHILO, EISA B	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/674,261	AU ET AL.	
	Examiner	Art Unit	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 April 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-12,14,16 and 18-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-12,14,16 and 18-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4/6/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1 This action is responsive to the amendment filed on April 6, 2006.

2 The cancellation of claims 5, 13, 15 and 17 is acknowledged. Pending claims are 1-4, 6-12, 14, 16 and 18-20.

3 Claims 1, 4, 6-12, 14, 16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura et al. (EP' 466) in view of Lapidus et al. (US' 021), for the reasons set forth in the previous office action mailed on December 20, 2005.

4 Claims 2 and 3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura et al. (EP' 466) in view of Lapidus et al. (US' 021) and further in view of Schwarzkopf (FR' 766), for the reasons set forth in the previous office action mailed on December 20, 2005.

New ground of rejection

Claim Rejections - 35 USC § 103

4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura et al. (EP 0148466) in view of Lapidus et al. (US 4,104,021) and further in view of Casperson et al. (US 5,376,146).

Nomura et al. (EP' 466) teaches an alkaline hair dyeing composition comprising p-phenylenediamine as an oxidation dye in the amount of 2%, ammonium carbonate in the amount

of 3%, sodium edetate as a chelant agent in the amount of 2%, water as a carrier and oxidizer in the amount of 6% as claimed in claims 1, 4 and 15-16 (see page 12, table 3, composition O).

Lapidus (US' 021) in analogous art of hair dyeing formulation, teaches a process for dyeing hair comprising applying to the hair a mixture of a colorant-oxidative solution comprising alkaline reagents and chelant agents such as ethylenediaminetetracetic acid Na salt (see col. 3, lines 29-31), wherein the dyeing composition is applied in a successive applications for a time period up to 5 minutes and of substantially the same length for each subsequent application and wherein the application can be repeated once every 2 to 8 weeks (see col. 4, lines 45-63). It is further taught by Lapidus that the depth of shade is obtained by successive treatments (see col. 3, lines 10-15).

The disclosures of Nomura et al. (EP' 466) and Lapidus et al. (US' 021) do not teach or disclose the claimed species of metal hydroxide as an alkalizing agent in the hair dyeing composition as claimed in claim 20.

However, both Nomura et al. (EP' 466) and Lapidus et al. (US' 021) suggest the use of alkaline agents in the dyeing composition (see EP' 466, page 12, Table 3) and also (see US' 021, col. 3, line 31).

Casperson et al. (US' 146) in analogous art of hair dyeing formulation, teaches a composition comprising alkalizing agents of sodium hydroxide and potassium hydroxide as metal oxides as claimed in claim 20 (see col. 5, lines 12-29).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the dyeing composition of Nomura et al. (EP' 466) by incorporating the metal hydroxides as taught by Casperson et al.

(US' 146) and to apply such a composition by using the process as taught by Lapidus (US' 021) to arrive at the claimed invention because both Nomura et al. (EP' 466) and Lapidus (US' 021) suggest the use of alkaline agents in a hair dyeing compositions. Casperson et al. (US' 146) clearly teaches the claimed species of metal hydroxides as alkaline agents in the dyeing composition, and, thus, a person of the ordinary skill in the art would be motivated to apply to the human hair in successive process a dyeing composition that comprises oxidation bases, alkaline agents of metal hydroxides, ammonium carbonate, chelant agent and oxidizing agent with a reasonable expectation of success for producing a deep shade of colors, and would expect such a process to have similar results to those claimed in the absent of contrary.

Response to Applicant's Arguments

Applicant's arguments filed 4/6/2006 have been fully considered but they are not persuasive.

With respect to the rejection of the claims under 35 U.S.C. 103(a) as being unpatentable over Nomura et al. (EP' 466) in view of Lapidus et al. (US' 021), Applicant argues that there is nothing in Nomura et al. that discloses or suggests that the combination of relatively high levels of an ammonium carbonate salt and chelant can provide colorant compositions that provide a means of substantially avoiding hair damage and that enable to achieve gradual hair coloration over time using the relatively short duration treatment by amended claim 1. Applicant also argues that Schwarzkopf fails to disclose the short contact period required by claim 1. Applicant further argues that Lapidus et al. does not disclose the combination of a water-soluble carbonate salt together with relatively high levels chelant, or the benefits provided by such systems.

Furthermore, Applicant argues that the combination of the references is mere hindsight suggested only by this invention.

The examiner respectfully disagrees with the above arguments because one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case Nomura et al. (EP' 466), Schwarzkopf (FR' 766) and Casperson et al. (US' 146) teach and disclose dyeing compositions comprise oxidation bases, alkalizing agents of metal hydroxides, ammonium carbonate or carbamate salts, chelant components and oxidizing agents in the claimed amounts as shown in the rejection. Lapidus et al. (US' 021) clearly teaches a process for dyeing hair comprising applying to the hair a mixture of a colorant-oxidative solution in successive applications for a time of period up to 5 minutes (see col. 4, lines 45-63 and col. 7, claim 1). Therefore, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to apply to the hair in a successive process a dyeing composition that comprises oxidation bases, ammonium carbonate, chelant agents, metal hydroxides and oxidizing agents to arrive at the claimed invention.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Further, applicants have not shown on record the criticality of the claimed invention over the compositions and/or the methods of the closed prior art of record.

6 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eisa Elhilo
Primary Examiner
Art Unit 1751

May 27, 2006